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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SIMON J. BURCHETT PHOTOGRAPHY, INC., Case No.: 19-cv-1269

Plaintiff,

ECF CASE

v.

**COMPLAINT AND JURY DEMAND
FOR DAMAGES FOR COPYRIGHT
INFRINGEMENT**

SEASPACE CORP.,

Defendant.

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Plaintiff Simon J. Burchett Photography, Inc., by and through the undersigned counsel, brings this Complaint and Jury Demand against SEASPACE Corp. (“SEASPACE”) for damages based on copyright infringement and related claims pursuant to the Copyright Act and Copyright Revisions Act, 17 U.S.C. §§ 101, et seq. (“the Copyright Act” or “Act”) and the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201-05 (“DMCA”). Plaintiff alleges below, upon personal knowledge as to itself, and upon information and belief as to other matters so indicated.

NATURE OF THE ACTION

1. Defendant copied, and publicly displayed seven (7) of plaintiff’s copyrighted photographic images of various vessels covered by U.S. Copyright Registrations No. VA2 036-532 (the “Copyrighted Images.”). Defendant also created four (4) illegal derivative works from plaintiff’s Copyrighted Images and publicly distributed and displayed those images.

2. Defendant also copied, distributed and publicly displayed the Copyrighted Images and illegal derivative works, by publishing all eleven (11) images in its 2007 and 2010 Year End Reports. The 2007 and 2010 Year End Reports were physically distributed and then put on line. Defendant also displayed, and continues to display, all eleven (11) images at issue on its website.

3. At no time did defendant obtain a license or permission of any kind for these uses.

4. Numerous requests have been made to defendant to produce a license if it has one or stop infringing. Defendant has failed to produce any license and has refused to stop infringing.

5. Defendant SEASPAN claims it has an invoice for four (4) images. But defendant used seven (7) images and created four (4) illegal derivatives. Consequently, the purported invoice is of no moment.

6. Moreover, the purported invoice is not a license. The purported invoice doesn't state what images are covered, the duration, attribution requirements, restrictions on use, the geographic area, right to display publicly, the uses or mediums.

7. Defendant also failed to include information on the eleven (11) images on its website and 2007 and 2010 Annual Reports which identified the author of the Copyrighted Images, the owner of any right in the Copyrighted Images, or information about the terms and conditions of use of the Copyrighted Images. Defendant also intentionally altered or removed the metadata from the Copyrighted Image. There are fifteen (15) clear violations of the DMCA 17 U.S.C. §§ 1201-02 and plaintiff is entitled to up to \$25.000 under 17 U.S.C. § 1203 per instance.

8. Defendant's infringement satisfies the standard for enhanced damages under Section 504(c) of the Act, and plaintiff has been injured as a result of defendant's actions.

JURISDICTION

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (jurisdiction over copyright actions).

10. The Copyrighted Images were registered for copyright protection with the U.S. Copyright Office prior to the filing of this matter and satisfy the preregistration requirement as set forth in 17 U.S.C. § 411(a). See **Exhibit 1**. All beneficial rights to the Copyrighted Images have been assigned from the author to plaintiff, and said assignment has been registered with the U.S. Copyright Office.

11. The Copyrighted Images were registered within three months of the infringement entitling plaintiff to an election of statutory damages and attorneys' fees.

12. This Court has *in personam* jurisdiction over the defendant because the defendant has established contacts within this Judicial District sufficient to permit the exercise of personal jurisdiction. Defendant publishing the Copyrighted Images on the Internet with the intent they be used or viewed within this Judicial District in the ordinary course of trade, and the defendant has conducted significant business targeted at New York in the ordinary course of trade.

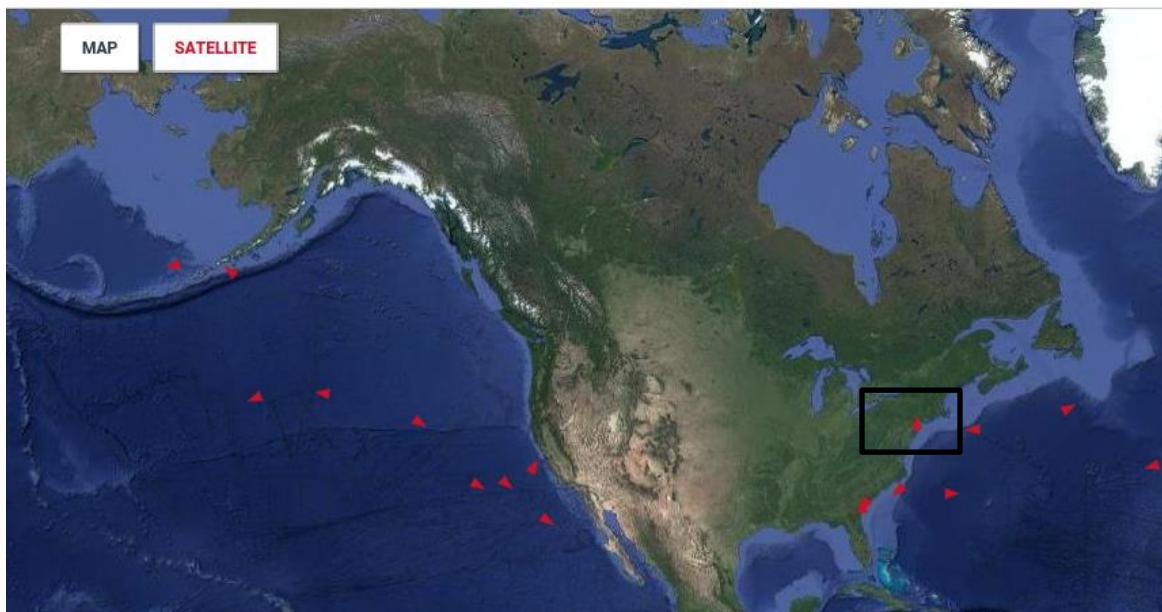
13. CPLR § 302 (a)(3) authorizes this Court to exercise jurisdiction over nondomiciliaries who commit a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if it: (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in

the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.

14. SEASSPAN trades on the New York Stock Exchange.

15. SEASSPAN is one of the largest container ship companies in the world, and frequently delivers, and picks up, goods in New York.

16. In fact, SEASSPAN's vessel the COSCO Faith is currently docked on Staten Island where it unloaded goods from China.



17. Defendant reproduced and distributed the Copyrighted Images and illegal derivatives through its website found at www.seaspan.com and by using the eleven (11) images in its 2007 and 2010 Annual Report. These are intentional torts (copyright infringement) committed without the state.

18. The copyright owner resides in New York, NY, and the injury was felt in that Judicial District.

19. Defendant regularly conducts or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state.

20. This Court has jurisdiction pursuant to CPLR § 302 (a)(3).

VENUE

21. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c) and/or 28 U.S.C. § 1400(a).

22. Plaintiff has the right to bring the within action pursuant to 17 U.S.C. § 501(b).

23. Defendant regularly and frequently lands ships at the Staten Island port.

PARTIES

24. At all times material hereto, plaintiff Simon J. Burchett, Inc. (“BURCHETT”) was, and is, a corporation organized under the laws of the State of New York with a principal place of business in Manhattan, New York.

25. Upon information and belief, defendant SEASPAN Corp. (“SEASPAN”) was, and is, a forien company with a principal place of business located at Bupa Centre, 2nd Floor, Unit 2, 141 Connaught Road West, Hong Kong.

Facts

26. Plaintiff is owned by world-renowned photographer Simon J. Burchett.

27. Simon Burchett has been honored with many photography awards and accolades.

28. BURCHETT is the beneficial owner, by assignment, of the Copyrighted Images.

Infringements

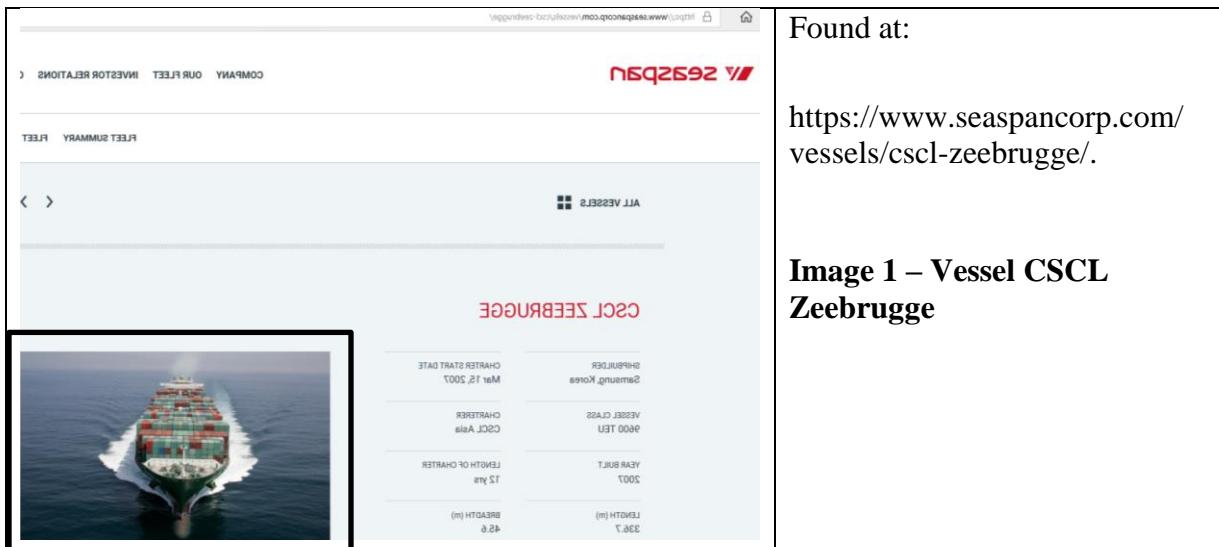
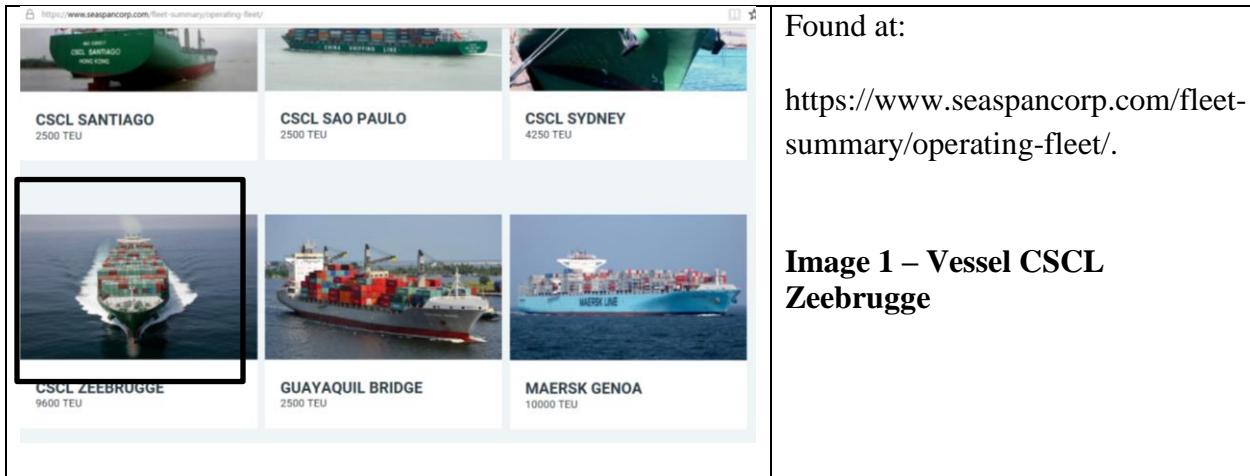
29. SEASPACE copied, distributed, and publicly displayed eleven (11) separate Copyrighted Images and illegal derivatives in its 2007 and 2010 Annual Reports. Both Annual Reports were distributed to the public, and posted on defendant's website where they can be found as of the date of this Complaint.

30. There is one (1) image that appears in three separate sub-pages on defendant's website found at www.seaspancorp.com.

31. Defendant had no license or authority for any of these uses. Plaintiff discovered these uses in December 2018, January 2019, and February 2019.

32. The following are sub-pages on defendant's website with infringing images which can be viewed as of the date of this Complaint.

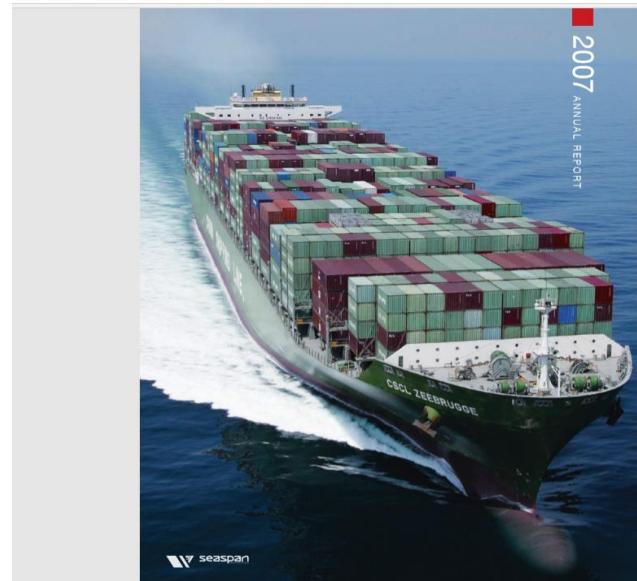
	<p>Found at: https://www.seaspancorp.com/fleet-summary/.</p> <p>Image 1 – Vessel CSCL Zeebrugge</p>
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33. SEASPACE also copied and distributed three (3) Copyrighted Images in its 2007 Annual Report. SEASPACE then publicly displayed the Annual Report on its website. Plaintiff discovered these infringements in February 2019.

34. The following images are from SEASPACE's 2007 Annual Report which can be found at https://www.seaspacercorp.com/wp-content/uploads/2014/12/SSW_2007_Annual_Report.pdf. See **Exhibit 2**.

[spancorp.com/wp-content/uploads/2014/12/SSW_2007_Annual_Report.pdf](https://www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2007_Annual_Report.pdf)



Cover Page – SEASPACE 2007 Annual Report

Found at:

https://www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2007_Report.pdf

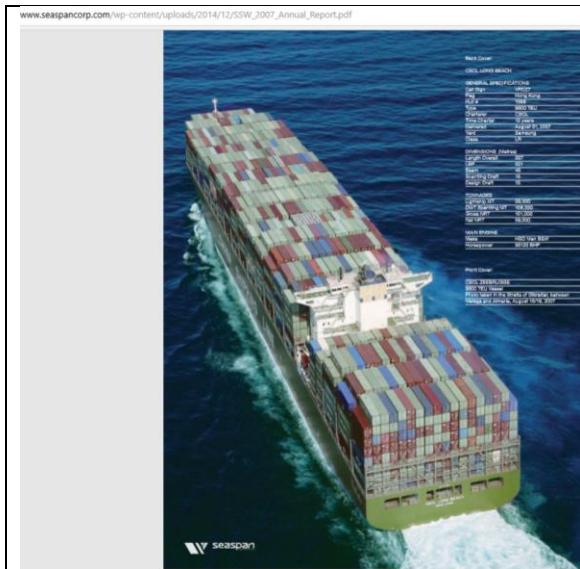
Image 2 – Vessel CSCL Zeebrugge

https://www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2007_Annual_Report.pdf



Page 12 – SEASPACE 2007 Annual Report

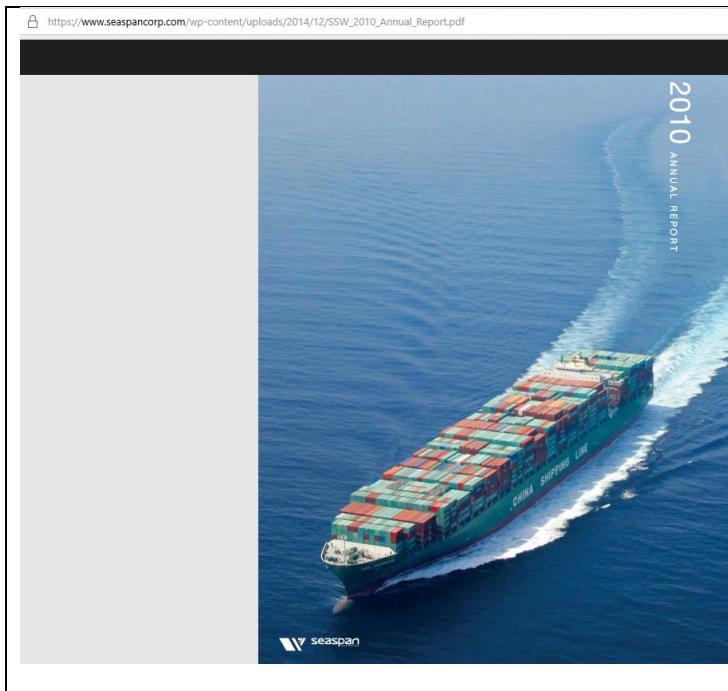
Image 3 – Vessel Dubai Express



Back cover – SEASPACE 2007 Annual Report

Image 4 – Vessel CSCL Long Beach

35. The following images are from SEASPACE's 2010 Annual Report which can be found at https://www.seaspacecorp.com/wp-content/uploads/2014/12/SSW_2010_Annual_Report.pdf. Plaintiff discovered these infringements in January 2019.



Cover – SEASPACE 2010 Annual Report

Image 5 – Vessel CSCL Zebrugge

[/www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2010_Annual_Report.pdf](https://www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2010_Annual_Report.pdf)



GERRY WANG
CHIEF EXECUTIVE OFFICER,
CO-CHAIRMAN AND CO-FOUNDER

“In 2010, we were proud to embark on a leadership role in working with shipyards to design innovative containerhips under our new program, Seaplan Action On Vessel Energy Reduction (SAVER). Under the SAVER program, our vessel designs will help reduce fuel consumption, increase loadability and improve environmental performance.**”**

Our common shares are listed on the New York Stock Exchange under the symbol “SSW”, and our Series C preferred shares are listed on the New York Stock Exchange under the symbol “SSW-PHC”.

CSCL Zeebrugge was 100% owned photographed in the Strait of Gibraltar, between Majorca and Africa.

SSW
2010

Page 3 – SEASPACE 2010 Annual Report

Image 1 – Vessel CSCL Zeebrugge

[/www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2010_Annual_Report.pdf](https://www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2010_Annual_Report.pdf)

Corporate Profile



Seaplan is a leading independent owner of containerhips, which are deployed primarily on long-term, fixed-rate charters to the world's leading shipping lines. We provide reliable service to our customers, providing them with high-quality modern vessels, best-in-class operations, innovative vessel designs, and high vessel utilization.

Seaplan takes a private approach to owning, managing, and financing its containerhips. Our business generates stable, long-term cash flows from fixed-rate time charters with high-quality, creditworthy liner companies. We have a strong and flexible capital structure and a proven ability to access a variety

of capital sources, which we use to pursue attractive growth opportunities as market conditions allow.

Seaplan is committed to creating long-term shareholder value by growing our business in a balanced and disciplined manner, conserving liquidity, and returning capital to shareholders and focusing on the strongest credit customers and high-quality assets.

Our common shares are listed on the New York Stock Exchange under the symbol “SSW”, and our Series C preferred shares are listed on the New York Stock Exchange under the symbol “SSW-PHC”.

Financial & Operating Highlights

- **2010 REVENUE** – \$1.0 billion
- **2010 Net estimated charter revenue is ~\$750 million**
- **Adjusted EBITDA¹ is expected to be ~\$650 million** and cash available for distribution is expected to be ~\$300 million in 2010
- **No significant debt maturities until 2015**

EXCHANGES

- **Acquisition of X-Press**
- **Cash available for distribution to common shareholders**



Year	Revenue	Ship operating expenses	Normalized net earnings ²
2006	\$365.6	\$102.2	\$106.1
2007	\$375.5	\$102.2	\$106.1
2008	\$397.5	\$106.1	\$106.1
2009	\$407.5	\$106.1	\$106.1
2010	\$419.9	\$106.1	\$106.1

¹ Adjusted EBITDA is defined as net earnings before interest, taxes, depreciation and amortization. ² Normalized net earnings is defined as net earnings before interest, taxes, depreciation and amortization, plus non-cash charges and gains.

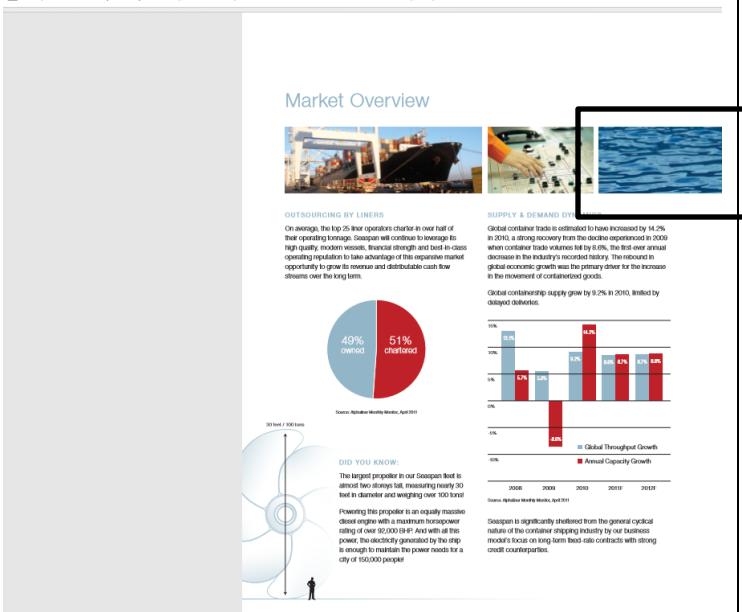
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Page 4 - SEASPACE 2010 Annual Report

Image 3 – Vessel Dubai Express

https://www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2010_Annual_Report.pdf

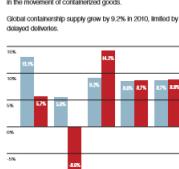
Market Overview



OUTSOURCING BY VESSEL
On average, the top 25% of operators charter in over half of their operating tonnage. Seaspans will continue to leverage its high-quality modern vessels, financial strength and best-in-class operating reputation to take advantage of this expansive market opportunity to grow its revenue and distribute cash flow streams over the long term.

SUPPLY & DEMAND TRENDS
Global container trade is estimated to have increased by 6.7% in 2010, a strong recovery from the decline experienced in 2009 when container trade volumes fell by 8.0%, the first-ever annual decline in the industry's recorded history. The rebound in global economic activity has been a major driver for the increase in the movement of containerized goods.

Global container supply grew by 9.2% in 2010, limited by delayed deliveries.



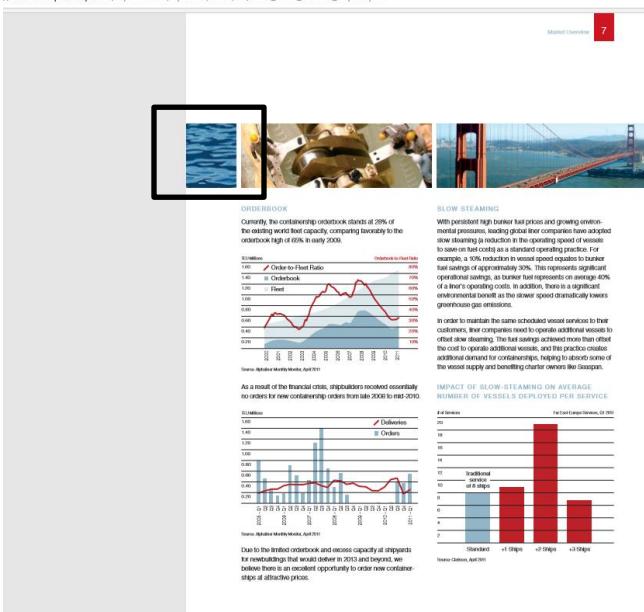
Year	Global Throughput Growth (%)	Annual Capacity Growth (%)
2008	6.7%	8.0%
2009	6.7%	8.0%
2010	9.2%	9.2%
2011	7.5%	7.5%
2012	7.5%	7.5%

DID YOU KNOW:
The largest propeller in our Seaspans fleet is almost two stories tall, measuring nearly 100' in diameter and weighing over 100 ton. Powering this behemoth is an equally impressive diesel engine with a maximum power output rating of over 92,000 kW! And with all this power, the electricity generated by the ship is enough to maintain the power needs for a city of 50,000 people!

Page 10 – SESPLAN 2010 annual Report

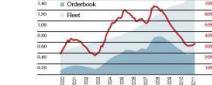
Image 6 - Illegal Derivative of image of CSCL Zebrugge

//www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2010_Annual_Report.pdf



ORDER BACKLOG
Currently, the containerizing backlog stands at 29% of the existing world fleet capacity, compared to 20% of backlog right at 65% in early 2009.

Order-to-Fleet Ratio

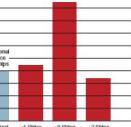


Year	Order-to-Fleet Ratio
2000	1.00
2001	1.00
2002	1.00
2003	1.00
2004	1.00
2005	1.00
2006	1.00
2007	1.00
2008	1.00
2009	1.00
2010	1.00
2011	1.00

SLOW STEAMING
With persistent high charter fuel prices and growing environmental pressures, leading global ship companies have adopted slow steaming (a reduction in the operating speed of vessels to reduce fuel consumption) as a key cost reduction strategy. For example, a 10% reduction in vessel speed equals 10% fuel savings (a 10% reduction in fuel cost). This represents significant environmental benefit as the slower speed dramatically lowers greenhouse gas emissions.

In order to maintain the same scheduling vessel iteration to their customers, their companies need to operate additional vessels to offset slow steaming. The fuel savings achieved more than offset the cost to operate additional vessels, and the company can create significant revenue by charging customers to utilize the extra capacity of the vessel supply and contributing vessel owners like Seaspans.

IMPACT OF SLOW STEAMING ON AVERAGE NUMBER OF VESSELS DEPLOYED PER SERVICE



Service	Standard	+1 Ships	+2 Ships	+3 Ships
Asia Services	10	11	12	13
Far East Europe Services	10	11	12	13

Due to the limited backlog and excess capacity at seaports in Europe, Seaspans will deliver in 2011 and beyond, will believe there is an excellent opportunity to enter new container ship at attractive prices.

Page 11 – SEASPAN 2010 Annual Report

Image 7 - Illegal Derivative of image of CSCL Zeebrugge

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https://www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2010_Annual_Report.pdf



Plotting the Course for Balanced, Controlled Growth

In 2011, growth opportunities in the containerhip market are increasingly attractive as a result of:

- increasing demand for shipping, as total tonnage has decreased and charter rates for larger vessels have risen;
- rising fuel costs, aging fleets and focus on environmental impacts which are causing shipping companies to demand larger, modern, more fuel efficient ships;
- significant excess shipyard capacity for delivery in 2011 and beyond, creating opportunities to offer attractive pricing and charter concessions on newbuildings;

To capitalize on these opportunities, we have partnered with an affiliate of the Carlyle Group, a global alternative asset manager with more than \$87 billion under management, Tiger Management & Lazard Frères, and the Weintraub family, a significant Seaspain shareholder, to form Global China Investments Investments LLC, or GC Intermoda.

We believe that this new venture provides a platform for growth that will continue to exceed the industry's historical 10% growth rate by:

- combining the partners' transportation experience and established Asian business relationships;
- having the ability to obtain volume price discounts, attractive vessel financing and favorable charter rates;
- creating logical synergies in operations and access to a port network designed to increase the amount of cargo that it carries;

Seaspain has a right of first refusal relating to GC Intermoda's containerhip investment opportunities until August 2011. The right of first refusal provides potential opportunities for Seaspain to increase its ownership interest in GC Intermoda. Seaspain has signed a letter of intent through GC Intermoda to purchase a significant number of new Panamax 10000 TEU vessels in February 2011. We are currently in discussions with GC Intermoda and believe a deal may be made available to GC Intermoda and would be subject to our right of first refusal.

CSCL Long Beach was 317' from the original photograph of the vessel at Hamburg

Page 16 – SEASPACE 2010 Annual Report

Image 6: Vessel CSCL Long Beach

https://www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2010_Annual_Report.pdf



Plotting the Course for Balanced, Controlled Growth / Operating Fleet List

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Operating Fleet List

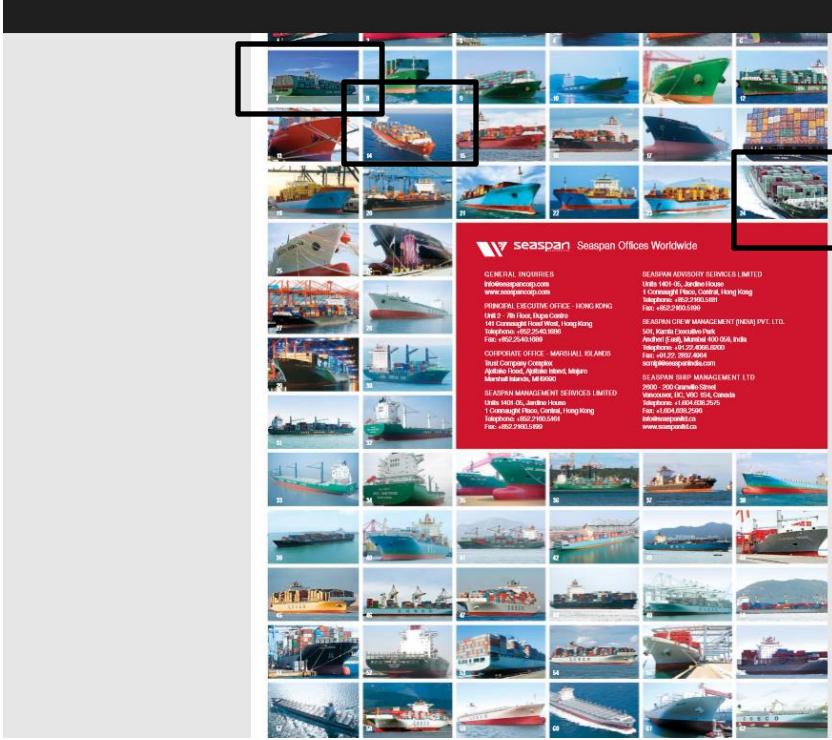
# VESSEL	MANUFACTURER	CLASSE	CHARTERER	# VESSEL	MANUFACTURER	CLASSE	CHARTERER
1 CSCL London	Samsung, Korea	4980 TEU	CSCL Asia	27 CSCL Marienthal	Jiangsu, China	2500 TEU	CSCL Asia
2 CSCL Clever	Samsung, Korea	4980 TEU	CSCL Asia	28 CSCL Lübeck	Jiangsu, China	2500 TEU	CSCL Asia
3 CSCL Clever	Samsung, Korea	4980 TEU	CSCL Asia	29 CSCL Lübeck	Jiangsu, China	2500 TEU	CSCL Asia
4 CSCL Dallas	Samsung, Korea	4980 TEU	CSCL Asia	30 CSCL Sale Asia	Jiangsu, China	2500 TEU	CSCL Asia
5 CSCL Fellowes	Samsung, Korea	4980 TEU	CSCL Asia	31 CSCL Celso	Jiangsu, China	2500 TEU	CSCL Asia
6 CSCL Oceanus	Samsung, Korea	8000 TEU	CSCL Asia	32 CSCL Læsøensis	Jiangsu, China	2500 TEU	CSCL Asia
7 CSCL Africa	Samsung, Korea	8000 TEU	CSCL Asia	33 MOL Emerald	Hyundai, Korea	5300 TEU	MOL
8 CSCL Vancouver	Samsung, Korea	4980 TEU	CSCL Asia	34 CSCL Læsøensis	Jiangsu, China	4580 TEU	CSCL Asia
9 CSCL Sydney	Samsung, Korea	4980 TEU	CSCL Asia	35 MOL Endeavour	Hyundai, Korea	5300 TEU	MOL
10 CSCL York	Samsung, Korea	4980 TEU	CSCL Asia	36 CSCL Læsøensis	Jiangsu, China	4580 TEU	CSCL Asia
11 CSCL Melville	Samsung, Korea	4980 TEU	CSCL Asia	37 MOL Europa	Hyundai, Korea	5300 TEU	MOL
12 CSCL Umbria	Samsung, Korea	4980 TEU	CSCL Asia	38 MOL Impala	Hyundai, Korea	5300 TEU	MOL
13 New Dahl Express	Samsung, Korea	4980 TEU	HL USA	39 Gwangyang Bridge	Jiangsu, China	2500 TEU	K-Line
14 Dahl Express	Samsung, Korea	4980 TEU	HL USA	40 COSCO Japan	Hyundai, Korea	8000 TEU	COSCO
15 Akito Express	Samsung, Korea	4980 TEU	HL USA	41 COSCO Korea	Hyundai, Korea	8000 TEU	COSCO
16 Selene Express	Samsung, Korea	4980 TEU	HL USA	42 COSCO Philippines	Hyundai, Korea	8000 TEU	COSCO
17 Lakota Express	Samsung, Korea	4980 TEU	HL USA	43 COSCO Lusitania	Jiangsu, China	4580 TEU	CSCL Asia
18 Rio Grande Express	Samsung, Korea	4980 TEU	HL USA	44 COSCO Magellan	Hyundai, Korea	8000 TEU	COSCO
19 MOL Arctic	Odense, Denmark	4980 TEU	APM	45 COSCO Bridge	Jiangsu, China	2500 TEU	K-Line
20 Sanita Express	Samsung, Korea	4980 TEU	HL USA	46 USDI Medellin	Zhengzhou, China	4265 TEU	USDI
21 Wink	Odense, Denmark	4980 TEU	APM	47 CSCL Lulu	Jiangsu, China	4265 TEU	CSCL Asia
22 York	Odense, Denmark	4980 TEU	APM	48 COSCO Indonesia	Hyundai, Korea	8000 TEU	COSCO
23 MSC Arizona	Odense, Denmark	4980 TEU	APM	49 COSCO Thailand	Hyundai, Korea	8000 TEU	COSCO
24 CSCL Zeebridge	Samsung, Korea	9800 TEU	CSCL Asia	50 Bruselas Bridge	Samsung, Korea	4000 TEU	K-Line
25 CSCL Zeebridge	Zhengzhou, China	4000 TEU	CSCL Asia	51 COSCO Europe	Hyundai, Korea	8000 TEU	COSCO
26 Rio de Janeiro Express	Samsung, Korea	4980 TEU	HL USA	52 COSCO Bridge	Samsung, Korea	4000 TEU	K-Line
27 Mera Express	Samsung, Korea	4980 TEU	HL USA	53 COSCO Africa	Hyundai, Korea	8000 TEU	COSCO
28 COSCO Yuhong	Zhengzhou, China	56000 TEU	COSCO	54 COSCO Vietnam*	Hyundai, Korea	6000 TEU	COSCO
29 CSCL Long Beach	Samsung, Korea	9800 TEU	CSCL Asia	55 Baltic Bridge	Samsung, Korea	4980 TEU	K-Line
30 CSCL Panama	Jiangsu, China	25000 TEU	CSCL Asia	56 COSCO Skye*	Hyundai, Korea	15000 TEU	COSCO
31 CSCL Sea Pelder	Jiangsu, China	25000 TEU	CSCL Asia	57 COSCO Prince	Hyundai, Korea	15000 TEU	COSCO

*Container ship delivered in 2011

Page 17 – SEASPACE 2010 Annual Report

Image 8 - Illegal Derivative of Image 5

https://www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2010_Annual_Report.pdf



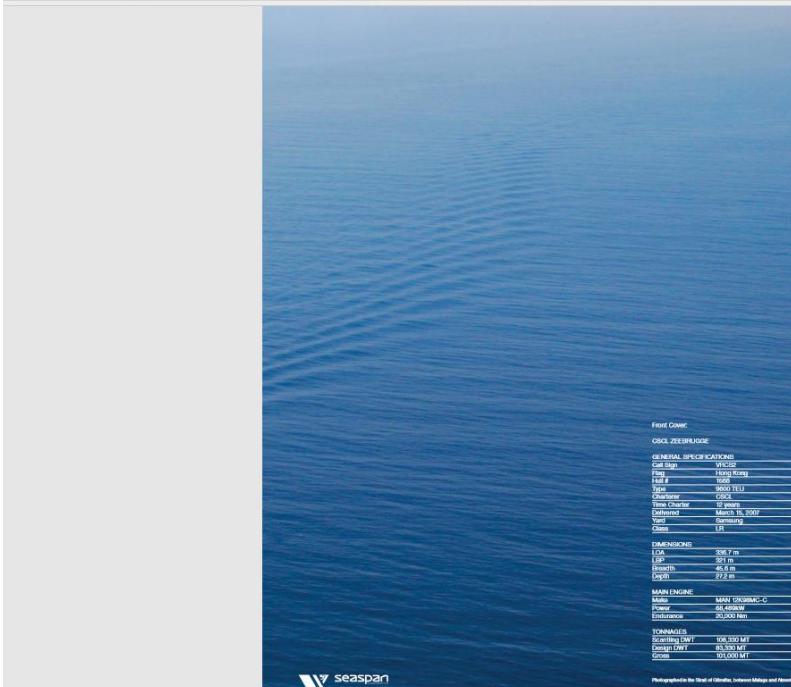
Page 43 – SEASPACE 2010 Annual Report

Image 9 – Vessel CSCL Africa

Image 3 – Vessel Dubai Express

Image 10 – Illegal derivative CSCL Zeebrugge

https://www.seaspancorp.com/wp-content/uploads/2014/12/SSW_2010_Annual_Report.pdf



Front Cover:
CSCL ZEEBRUGGE

GENERAL SPECIFICATIONS

Call Sign	CG-100
IMO	9100000
Hull #	1998
Year	1998
Charterer	CSCL
Builder	Daewoo Shipbuilding & Marine
Delivered	March 15, 2007
Year	2007
Owner	CSCL
IMO	9100000

TIMES

L.O.A.	395.7 m
LOD	355 m
Breadth	46.4 m
Depth	22.2 m

MAIN ENGINE

Model	MAN B&W MAC-C
Power	68,400kW
Efficiency	20.0/21.0

TECHNICALS

Scrubber DWT	108,300 MT
Design DWT	83,750 MT
Grade	100

Photographed in the Strait of Gibraltar, Indonesia Mabuk and Abrau

seaspan

Back Page – SEASPACE 2010 Annual Report

Image 11 – Illegal derivative of Image 6 CSCL Zeebrugge

36. SEASPACE failed to credit plaintiff on its website, it also failed to in its 2007 and 2010 Annual Reports. It illegally created derivative four (4) derivative works in violation of 17 U.S.C. § 106(2).

DMCA VIOLATIONS

37. Defendant is responsible for fifteen (15) instances which constitute separate violations of the DMCA 17 U.S.C. §§ 1201-1203.

38. On fifteen occasions, defendant failed to include information which identified the Copyrighted Images, the author of the Copyrighted Images, the owner of any right in the Copyrighted Images, or information about the terms and conditions of use of the Copyrighted Images. The mis-attribution is further evidence of defendant's violation of the DMCA.

39. Defendant went even further to avoid crediting plaintiff. On page 3 of the SEASPACE 2010 Annual Report, defendant states:

“CSCL Zeebrugge 9600 TEO, Photographed in Sea of Gibraltar, between Malaga and Almeria”

40. As with every other use, defendant gives detailed information on the image but fails to attribute plaintiff in any manner.

41. On the back cover, defendant created an illegal derivative and states:

“Photographed in Sea of Gibraltar, between Malaga and Almeria”

42. Defendant admits that it is an illegal derivative of the image from page 3 of the SEASPACE 2010 Annual Report. It merely omits the vessel information which it illegally cropped out.

43. On page 16 of the SEASPACE 2010 Annual Report, defendant states:

“CSCL Long Beach 9600 TEO vessel photographed off the coast of Portugal”

44. Defendant omits the fact that plaintiff flew a plane 100 miles off the coast of Portugal to take the image with no assistance from the defendant.

45. On the back page of the SEASPAN 2007 Annual Report, rather than attribute plaintiff as the photograpgher. Defendant states:

“CSCL Zeebrugge 9600 TEO, Photographed in Sea of Gibraltar, between Malaga and Almeria August 18/19, 2001”

46. A shocking amount of information, yet nothing to attribute the photograpgher.

47. Curiously, defendant, based in Hong Kong, did attribute images created by Asian photograpghers.

48. Defendant has violated 17 U.S.C. §§ 1201-03 by failing to include information which identified the Copyrighted Images, the author of the Copyrighted Images, the owner of any right in the Copyrighted Images, or information about the terms and conditions of use of the Copyrighted Images. The mis-attribution is further evidence of defendant's violation of the DMCA.

Notices of Infringement

49. Defendant was put on notice numerous times by plaintiff's counsel that it was infringing plaintiff's copyrighted images.

50. Plaintiff's counsel requested licenses be produced for the seven (7) Copyrighted Images and four (4) derivative images used by defendant. Defendant failed to produce any.

51. At one point, defendant produced an invoice for four images (the “Invoice”).

52. On its face, the Invoice does not state what images are covered, the approved uses or mediums, duration, geographic scope, right to public display, etc. In the absence of this information. there is no conceivable way the Invoice could ever be considered a license.

53. SEASPACE cannot prove there was an implied license. The author did not create the Copyrighted Images with knowledge and intent that the works would be used by defendant for a specific purpose.

54. The Copyrighted Images here were not created for SEASPACE, nor did plaintiff grant SEASPACE the right to reproduce, distribute, publicly display, or create derivative works.

55. Plaintiff has been injured by SEASPACE's actions or omissions, and SEASPACE's infringements clearly satisfy the standard for enhanced damages under Section 504(c) of the Act.

**FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT**

56. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth here at length here.

57. It cannot be disputed that the plaintiff has a valid, registered copyrights, and owns all rights to the Copyrighted Images.

58. Defendant, without authority from plaintiff, reproduced, publicly displayed, and/or publicly distributed plaintiff's Copyrighted Images.

59. Defendant illegally created four (4) derivative works from plaintiff's Copyrighted Images in violation of Section 106 (2) of the Act.

60. Defendant has intentionally infringed (pursuant to Section 504(c)) plaintiff's exclusive rights set forth in Section 106 of the Act, and elsewhere.

61. Defendant's use of the Copyrighted Images and illegal derivatives was not for criticism, comment, news reporting, teaching, scholarship, or research.

62. Defendant's use was not transformative.

63. Defendant continued to distribute and/or publicly display the Copyrighted Images and illegal derivatives after notice.

64. Defendant has intentionality, or with reckless disregard, infringed plaintiff's rights under Section 106 of the Act.

65. As a direct and proximate result of defendant's infringement, plaintiff has incurred damages, and requests an award of defendant's profits, and plaintiff's loss, plus costs, interest, and attorneys' fees. Plaintiff would have charged £395 per image per year. That's £5,925 in lost license fees alone.

66. Plaintiff may also elect to recover statutory damages pursuant to 17 U.S.C. § 504(c)(2) for willful infringement of up to \$150,000, but not less than \$30,000.

SECOND CLAIM FOR RELIEF VIOLATION OF DMCA

67. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

68. Section 1202 of the DMCA provides, in part: "(a) no person shall knowingly and with the intent to induce, enable, facilitate or conceal infringement - (1) provide copyright information that is false, or (2) distribute or import for distribution copyright management information that is false. (b) No person shall, without the authority of the copyright owner or the law - (1) intentionally remove or alter any copyright management information, [or] (3) distribute . . . works [or] copies of works . . . knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title." 17 U.S.C. § 1202(a)-(b).

69. Copyright management information is defined as: “information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work . . . which is attached to a copy of a work or appears in connection with communication of the work to the public.” S.Rep. No. 105-190 (1988), note

70. Defendant failed to include information which identified the Copyrighted Images, the author of the Copyrighted Images, the owner of any right in the Copyrighted Images, or information about the terms and conditions of use of the Copyrighted Images. The mis-attribution is further evidence of defendant’s violation of the DMCA.

71. Defendant did, however, attribute images in its 2010 Annual Report which were taken by individuals of Asian origin.

72. Defendant violated the DMCA each time they wrongfully distributed the Copyrighted Images.

73. Defendant also violated section 1202 by abstracting or removing and/or altering the anti-circumvention software.

74. Defendant removed the protective metadata and, in fact, changed it to show it was the copyright holder.

75. Defendant did the forgoing with the intent to conceal the infringement.

76. Plaintiff elects to recover an award of statutory damages for each violation of section 1202 in the sum of \$25,000 per violation plus its reasonable costs and attorneys’ fees.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against defendants, jointly and severably, and awarding plaintiff as follows:

1. restitution of defendants’ unlawful proceeds;

2. compensatory damages in an amount to be ascertained at trial;
3. statutory damages to plaintiff according to proof, including but not limited to all penalties authorized by the Copyright Act (17 U.S.C. §§ 504(c)(1), 504(c)(2));
4. reasonable attorneys' fees and costs (17 U.S.C. § 505);
5. pre- and post-judgment interest to the extent allowable;
6. damages under the DMCA of \$25,000 per instance; and,
7. such other and further relief that the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: February 10, 2019
New York, New York

GARBARINI FITZGERALD P.C.

By: 
Richard M. Garbarini (RG 5496)